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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 23-777

Filed 2 April 2024

Mecklenburg County, Nos. 20 JT 434-37

IN THE MATTER OF:

J.F., T.F., S.F., K.F.,

Minor Children.

Appeal by Respondent-Mother from Order entered 14 March 2023 by Judge J. Rex Marvel in Mecklenburg County District Court. Heard in the Court of Appeals 5 March 2024.

*Sean P. Vitrano for Respondent-Appellant Mother.*

*Mecklenburg County Attorney's Office, by Senior Associate Attorney Kristina A. Graham, for Petitioner-Appellee Mecklenburg County DSS.*

*Fox Rothschild LLP, by Sarah M. Traynor, for Guardian ad Litem.*

HAMPSON, Judge.

**Factual and Procedural Background**

Respondent-Mother appeals from the trial court's Termination of Parental Rights Order entered 14 March 2023. The Record before us tends to reflect the following:

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Respondent-Mother is the mother of Keri, Shelly, Terry, and James, who were eleven, nine, six, and four years old, respectively, at the time of the filing of the juvenile petition in this case.<sup>1</sup> On 3 August 2020, Respondent-Mother was arrested and the children were temporarily placed in the homes of relatives. Mecklenburg County Youth and Family Services (“YFS”) recommended services to address domestic violence, mental health, and substance abuse issues. Respondent-Mother refused to engage in services, provide her address, or participate in scheduled Child and Family Team meetings, and she refused an assessment with a service provider. The children were taken into nonsecure custody on 20 October 2020 and YFS filed a Juvenile Petition the next day, alleging the children were neglected and dependent.

The trial court adjudicated the children to be neglected juveniles on 1 February 2021 and ordered Respondent-Mother to (1) complete substance abuse, domestic violence, and mental health assessments and follow their recommendations, (2) secure steady employment, (3) engage in consistent visitation, and (4) maintain communication with YFS. Respondent-Mother completed screenings but failed to abstain from drugs and alcohol, testing positive for substances on 18 May, 1 June, 16 June, and 6 July 2021. Respondent-Mother maintained employment through the pendency of the case, but she did not provide financial support to the children.

At the first Permanency Planning Hearing on 28 September 2021, the trial

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<sup>1</sup> The juveniles are referred to by the parties’ stipulated pseudonyms.

court ordered a primary permanent plan of guardianship with a secondary plan of reunification. On 11 November 2021, Respondent-Mother was charged with carrying a concealed firearm and possession of a firearm by a felon. Following the second Permanency Planning Hearing on 7 December 2021, the trial court again ordered a primary plan of guardianship and secondary plan of reunification.

Respondent-Mother further tested positive for marijuana and cocaine on 8 March 2022. Following the third Permanency Planning Hearing, the trial court found in its 13 May 2022 Order that Respondent-Mother denied having a substance abuse problem and had not visited the children since December 2021. The trial court suspended reunification efforts and ordered the primary permanent plan changed to adoption, with a secondary plan of guardianship. At the fourth Permanency Planning Hearing on 14 June 2022, the trial court found Respondent-Mother was not compliant with treatment services, had not visited the children since December 2021, lacked housing, and was facing a pending felony.

On 26 July 2022, YFS filed a Petition to Terminate Respondent-Mother's Parental Rights, alleging as grounds to terminate neglect under N.C. Gen. Stat. § 7B-1111(a)(1), willfully leaving the juveniles in foster care for more than 12 months without making reasonable progress under N.C. Gen. Stat. N.C. Gen. Stat. § 7B-1111(a)(2), and willful failure to pay a reasonable portion of the cost of care of the juveniles under § 7B-1111(a)(3). The trial court continued to order adoption as the primary permanent plan in the fifth and six Permanency Planning Hearings, held 16

September 2022 and 9 March 2023.

The trial court heard the Petition to Terminate Parental Rights on 9 and 14 March 2023. On 1 May 2023, the trial court entered its Termination of Parental Rights Order, which was subsequently served on Respondent-Mother on 3 May 2023. The trial court found the grounds for termination alleged by YFS existed and that the children's prior placements with relatives had all been disrupted, but that they were now in potential adoptive placements with foster families, the two boys with one family and two girls with another. The trial court also found the children were young, bonded with their placement parents, and likely to be adopted by the placement parents. It concluded that termination was in the best interests of the children and ordered Respondent-Mother's parental rights be terminated. Respondent-Mother filed written notice of appeal on 22 May 2023.

### **Issues**

Respondent-Mother argues that the trial court abused its discretion in determining that termination was in the children's best interests because (I) it did not address the likelihood of the children's adoption and (II) it did not consider potential relative placements for the children and the possibility of guardianship over termination and adoption.

### **Analysis**

The termination of parental rights is a two-stage process consisting of an adjudicatory stage and a dispositional stage. *See* N.C. Gen Stat. §§ 7B-1109 to -1110

(2023). During the adjudicatory stage, the petitioner must show by clear, cogent and convincing evidence that at least one of the grounds for termination set forth in Section 7B-1111(a) exists. *In re E.H.P.*, 372 N.C. 388, 391, 831 S.E.2d 49, 52 (2019). If the trial court finds grounds to terminate, it proceeds to the dispositional stage, where it determines whether terminating the parent's rights is in the best interests of the children. *Id.* at 392, 831 S.E.2d at 52; N.C. Gen. Stat. § 7B-1110(a). We review the trial court's determination of the juveniles' best interests at the dispositional stage for abuse of discretion. *Id.*

Respondent-Mother does not challenge the trial court's finding that grounds for termination exist, only its ruling that termination was in the best interest of the children. In determining whether termination of parental rights is in the best interest of the juveniles, the court must consider factors set out under Section 7B-1110:

- (1) The age of the juvenile.
- (2) The likelihood of adoption of the juvenile.
- (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
- (4) The bond between the juvenile and parent.
- (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
- (6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a). The trial court must consider each of these factors in making its determination, but it does not have to make written findings as to each.

*In re A.U.D.*, 373 N.C. 3, 10, 832 S.E.2d 698, 702 (2019). Written findings are only required as to the *relevant* factors, meaning those for which there is a conflict in the evidence such that it is “placed in issue by virtue of the evidence presented before the trial court.” *In re H.D.*, 239 N.C. App. 318, 327, 768 S.E.2d 860, 866 (2015) (citing *In re D.H.*, 232 N.C. App. 217, 221 n. 3, 753 S.E.2d 732, 735 n. 3 (2014)).

I. Likelihood of Adoption

Respondent-Mother argues first that the trial court should have made written findings as to the likelihood that the children would be adopted because their behavioral issues, which have led to their removal from a series of placements, represent a significant obstacle to adoption. While this may represent conflicting evidence meriting a written finding by the trial court, the trial court has made such a finding in its order, a fact which has gone unacknowledged in any of the briefing before us.

In its order, the trial court writes: “The children are young, bonded with their placement parents, and are likely to be adopted by the placement parents.” We acknowledge that this statement is styled by the trial court as a conclusion of law. However, it is self-evidently a finding of fact resolving one of the enumerated factors of Section 7B-1110. *See In re S.C.M.*, \_\_ N.C. App. \_\_, 896 S.E.2d 67, 2024 WL 16131 (unpublished) (“the likelihood of adoption is better classified as an ultimate finding of fact”) (citing *In re K.N.L.P.*, 380 N.C. 756, 764, 869 S.E.2d 643, 649 (2022) (reviewing a determination that there was a high likelihood of adoption as a finding

of fact). “The trial court’s classification of its own determination as a finding or conclusion does not govern our analysis.” *In re J.T.C.*, 273 N.C. App. 66, 73, 847 S.E.2d 452, 458 (2020) (citing *State v. Icard*, 363 N.C. 303, 308, 677 S.E.2d 822, 826 (2009)). The trial court not only considered the question of adoptability but made a written finding of fact as to that factor.

This finding is, in turn, supported by competent evidence presented to the court during the termination hearing. “The trial court’s dispositional findings of fact are binding on appeal if supported by the evidence received during the termination hearing or not specifically challenged on appeal.” *In re S.D.C.*, 381 N.C. 152, 155-56, 871 S.E.2d 486, 489 (2022) (citing *In re K.N.L.P.*, 380 N.C. 756, 759, 869 S.E.2d 643, 646-47 (2022)). Both foster families expressed a desire to adopt the children. The girls stated they were comfortable with their placement family and expressed excitement at the prospect of being adopted by them. The boys stated they were comfortable in their placement home and were bonded with the family. All the children were experiencing stable family and school lives. Regardless of whether sufficient conflicting evidence was presented to render adoptability a “relevant consideration” under Section 7B-1110(a), the trial court both considered the likelihood the children would be adopted and made written findings supported by competent evidence and therefore did not err.

## II. Relative Placement

Respondent-Mother also argues that the trial court erred in failing to consider

the availability of a relative placement when making the best interest determination. Although the possibility the juvenile may be placed under guardianship with a relative is not among the enumerated factors set out by Section 7B-1110(a), the statute directs the trial court to consider and make written findings as to “any relevant consideration.” N.C. Gen. Stat. § 7B-1110(a)(6). “Although the trial court is not expressly directed to consider the availability of a relative placement in the course of deciding a termination of parental rights proceeding, it may treat the availability of a relative placement as a ‘relevant consideration[.]’ ” *In re S.D.C.*, 373 N.C. 285, 290, 837 S.E.2d 854, 858 (2020). The extent to which the court must do so depends “upon the extent to which the record contains evidence tending to show whether such a relative placement is, in fact, available.” *Id.* The trial court is not required to address guardianship merely because it is the secondary plan. *In re S.M.*, 380 N.C. 788, 797, 869 S.E.2d 716, 725 (2022). Where there is conflicting evidence as to the availability of a potential relative placement, the trial court “should make findings of fact addressing ‘the competing goals of (1) preserving the ties between the children and their biological relatives; and (2) achieving permanence for the children as offered by their prospective adoptive family.’ ” *S.D.C.*, 373 N.C. at 290, 837 S.E.2d at 858 (citing *A.U.D.*, 373 N.C. at 10-11, 832 S.E.2d at 703-04). In the absence of evidence tending to show a relative placement is available, the trial court is not required to consider that issue or make related findings. *Id.* at 291, 837 S.E.2d at 858.

Our Supreme Court addressed a similar question in *In re E.F.*, 375 N.C. 88,



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846 S.E.2d 630 (2020). As in this case, the respondent mother argued the trial court should have considered the availability of a relative placement before terminating her parental rights. 375 N.C. at 93, 846 S.E.2d at 634. The mother testified that her grandmother wanted the children and would allow the mother to live with them once she had resolved her substance abuse issues. *Id.* at 94, 846 S.E.2d at 634. A GAL written report stated that the grandmother “has been approved for consideration of guardianship/adoption of the children, and the home has been approved by DSS.” *Id.* at 93, 846 S.E.2d at 634. However, without additional evidence of the grandmother’s “willingness or ability to provide permanence for respondent’s children,” the trial court was not required to consider her as a placement option and did not err by failing to make written findings as to placement with her. *Id.* at 94, 846 S.E.2d at 634. DSS had presented undisputed evidence that the prospective adoptive parents “had provided excellent care for respondent’s four children . . . and wished to provide them a permanent home through adoption.” *Id.* Without additional evidence of a permanent relative placement, the trial court was not obligated to make written findings of fact about the grandmother. *Id.*

At the termination hearing in this case, Respondent-Mother testified she was comfortable with the girls remaining with their placement family. However, she requested the boys be placed with her uncle and his wife in Virginia, where they could be around relatives around their age. It is unclear from the record that this family was being offered for guardianship, rather than another possibility for adoption:

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Respondent-Mother testified she “did not feel too safe and secure where they are now,” and “ideally, *if this was to continue*, I would like for my boys to be placed with my aunt and my uncle in Virginia.” (emphasis added) The Permanency Planning Social Worker for the children testified she had spoken with that family “and they would also be interested in adopting the boys[.]” The record does not show that this placement was submitted to the trial court as an alternative to adoption, nor evidence presented of the family’s willingness or ability to take on a guardianship role.

Respondent-Mother also suggests a second uncle should have been considered by the trial court for placement. The Permanency Planning Social Worker testified this uncle had stated he was interested in the children being placed with him but that “he had gone back and forth on that numerous times.” The children had been placed with him in the past, and the boys did not want to live with him because he had physically disciplined them. While Respondent-Mother points out that he had agreed to go through the foster licensing process in order to receive financial support in caring for the boys, he shortly after told YFS that he felt it was in their best interest to remain in their current foster home placements rather than being placed with him.

There is no evidence in the record to support a finding either of these suggested placements were available for guardianship, and no evidence of their “willingness or ability to provide permanence” for the children. *E.F.*, 375 N.C. at 94, 846 S.E.2d at 634. Moreover, no evidence contradicts that the children were in stable homes with their foster parents, had made progress while in those homes, and the foster parents

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had expressed a desire to adopt them. The trial court was not obligated to make findings about potential placement of the boys with either set of relatives suggested by Respondent-Mother on appeal. *See id.*

Thus, the trial court did not err in failing to make findings concerning a potential relative placement and duly considered and made appropriate findings as to adoptability under N.C. Gen. Stat. § 7B-1110(a)(2). Therefore, the trial court did not abuse its discretion in ruling that terminating Respondent-Mother's parental rights was in the best interest of the children. The trial court did not err in entering its order.

**Conclusion**

Accordingly, for the foregoing reasons, we affirm the trial court's Termination of Parental Rights Order.

AFFIRMED.

Judges GRIFFIN and STADING concur.

Report per Rule 30(e).